

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,

Complainant,

v.

COMMERCIAL ROOFING &
WATERPROOFING HAWAII, INC.,

Respondent.

CASE NO. OSH 2009-3
Inspection No. 311433221

ORDER NO. 315

PRETRIAL ORDER

PRETRIAL ORDER

Pursuant to the initial conference in this matter held by the Hawaii Labor Relations Board (Board) on April 9, 2009, and attended by J. Gerard Lam, Deputy Attorney General, for Complainant, and Jeffrey S. Harris, Esq., for Respondent, IT IS HEREBY ORDERED THAT:

A. The issues to be determined at trial are:

1. Citation 1, Item 1a (29 C.F.R. § 1926.502(h)(1)(ii))

- a. Whether Respondent violated 29 C.F.R. § 1926.502(h)(1)(ii).
- b. Whether the alleged violation is within the scope of the regulation or standard.
- c. Whether the Respondent's Safety Monitor failed to warn the employee of the hazard.
- d. Whether the injured employee engaged in misconduct that was preventable.

2. Citation 1, Item 1b (29 C.F.R. § 1926.502(h)(1)(v))

- a. Whether Respondent violated 29 C.F.R. § 1926.502(h)(1)(v).
- b. Whether the alleged violation is within the scope of the regulation or standard.

- c. Whether the Respondent's Safety Monitor had other responsibilities or was distracted.
 - d. Whether the injured employee engaged in misconduct that was preventable.
- 3. Citation 1, Item 2a (29 C.F.R. § 1926.503(a)(1))
 - a. Whether Respondent violated 29 C.F.R. § 1926.503(a)(1).
 - b. Whether the alleged violation is within the scope of the regulation or standard.
 - c. Whether the Respondent failed to train employees exposed to a fall hazard.
 - d. Whether the injured employee engaged in misconduct that was preventable.
- 4. Citation 1, Item 2b (29 C.F.R. § 1926.503(a)(2)(iv))
 - a. Whether Respondent violated 29 C.F.R. § 1926.503(a)(2)(iv).
 - b. Whether the alleged violation is within the scope of the regulation or standard.
 - c. Whether the Respondent failed to train each employee on his role in the safety monitoring system in use.
 - d. Whether the injured employee engaged in misconduct that was preventable.
- 5. Citation 2, Item 1 (29 C.F.R. § 1926.502(f)(2)(i))
 - a. Whether Respondent violated 29 C.F.R. § 1926.502(f)(2)(i).
 - b. Whether the alleged violation is within the scope of the regulation or standard.
 - c. Whether the Respondent's warning line was flagged every 6 feet with high visibility material.
- 6. As to all Citations and Items

- a. Whether any of Respondent's employees were exposed to or had access to the alleged hazard.
 - b. Whether the Respondent had actual or constructive knowledge of the hazard.
 - c. Whether compliance is feasible.
 - d. Whether the characterization of the violation and proposed penalty is proper.
 - e. Respondent also reserves the right to assert the unpreventable employee misconduct defense, or any other affirmative defenses warranted by discovery in this action, as to all items.
- B. The deadline for the parties' final naming of witnesses is **May 19, 2009**. Each party shall provide a list of the names of witnesses it plans to call at trial, along with each witness's addresses and the general subject to which the witness will testify, to the other party and to the Board by this date.
- C. The discovery cutoff date is **June 8, 2009**.
- D. Trial in this matter is scheduled for **July 20-21, 2009, at 9:30 a.m.**, or as soon thereafter as this case can be heard, in the Board's hearing room located at 830 Punchbowl Street, Room 434, Honolulu, Hawaii, 96813. The trial may be continued by the Board until completed.
- E. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by consent of the parties and the Board, or by order of the Board.

DATED: Honolulu, Hawaii, April 9, 2009.

HAWAII LABOR RELATIONS BOARD


EMORY J. SPRINGER, Member


SARAH R. HIRAKAMI, Member

NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the trial date. Further, you are required to furnish a copy of this Order to a duly recognized representative of the employees, if any, at least five working days prior to the trial date.

Copies sent to:

J. Gerard Lam, Deputy Attorney General
Jeffrey S. Harris, Esq.